

## CCRB INVESTIGATIVE RECOMMENDATION

|  |   |                           |   |                                    |                                 |
|--|---|---------------------------|---|------------------------------------|---------------------------------|
| Investigator:<br>Laura Strauss                   | Team:<br>Squad #6   | CCRB Case #:<br>201905380 | <input type="checkbox"/> Force                        | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |   |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Saturday, 06/01/2019 8:50 PM | Location of Incident:<br>Boston Road and Union Avenue; 42nd Precinct stationhouse | Precinct:<br>42           | 18 Mo. SOL<br>12/1/2020                               | EO SOL<br>7/18/2021                |                                 |
| Date/Time CV Reported<br>Sat, 06/01/2019 9:35 PM | CV Reported At:<br>IAB  | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 06/19/2019 9:30 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. SGT Joseph Spalding | 05171  | 927545 | SRG 2   |
| 2. POM Luis Ortiz      | 01133  | 956142 | SRG 2   |
| 3. POM Edward Bogucki  | 16654  | 957394 | SRG 2   |

| Officer(s)            | Allegation  | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.SGT Joseph Spalding | Abuse: At Boston Road and Union Avenue in the Bronx, Sergeant Joseph Spalding stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.  |                             |
| B.POM Luis Ortiz      | Abuse: At Boston Road and Union Avenue in the Bronx, Police Officer Luis Ortiz stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. |                             |
| C.SGT Joseph Spalding | Abuse: At Boston Road and Union Avenue in the Bronx, Sergeant Joseph Spalding frisked § 87(2)(b)  |                             |
| D.POM Edward Bogucki  | Abuse: At Boston Road and Union Avenue in the Bronx, Police Officer Edward Bogucki frisked § 87(2)(b)   |                             |
| E.SGT Joseph Spalding | Abuse: At Boston Road and Union Avenue in the Bronx, Sergeant Joseph Spalding searched the vehicle in which § 87(2)(b) was an occupant.               |                             |
| F.POM Luis Ortiz      | Abuse: At Boston Road and Union Avenue in the Bronx, Police Officer Luis Ortiz searched the vehicle in which § 87(2)(b) was an occupant.              |                             |
| G.POM Edward Bogucki  | Abuse: At Boston Road and Union Avenue in the Bronx, Police Officer Edward Bogucki threatened to arrest § 87(2)(b)                                    |                             |
| H.SGT Joseph Spalding | Abuse: At the 42nd Precinct stationhouse, Sergeant Joseph Spalding threatened to arrest § 87(2)(b)  |                             |

### Case Summary

On June 1, 2019, § 87(2)(b) filed this complaint over the phone with the Internal Affairs Bureau. On June 20, 2019, the CCRB received this complaint from IAB, under original log #19-21424.

On June 1, 2019, at approximately 8:50 p.m., Sgt. Joseph Spalding, PO Edward Bogucki, and PO Luis Ortiz, of Strategic Response 2, conducted a vehicle stop at Boston Road and Union Avenue in the Bronx. The rear driver's side door of the police vehicle opened and § 87(2)(b) honked and stopped his vehicle to avoid colliding with the door. PO Ortiz approached § 87(2)(b) asked what the problem was, and told § 87(2)(b) to pull his vehicle over (**Allegations A-B: Abuse of Authority, § 87(2)(g)**). After § 87(2)(b) and the passenger, § 87(2)(b) exited, Sgt. Spalding frisked § 87(2)(b) and PO Bogucki frisked § 87(2)(b) (**Allegations C and D: Abuse of Authority, § 87(2)(g)**). Sgt. Spalding and PO Ortiz searched § 87(2)(b)'s vehicle (**Allegations E and F: Abuse of Authority, § 87(2)(g)**). While at the rear of the vehicle, § 87(2)(b) turned around to watch the vehicle search. PO Bogucki told him that if he turned around, he would be placed in handcuffs (**Allegation G: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) went to the 42<sup>nd</sup> Precinct stationhouse and Sgt. Spalding stated that he could be arrested (**Allegation H: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was issued a summons for § 87(2)(b) (BR 01), which was recovered from his vehicle, and § 87(2)(b) was arrested on an unrelated bench warrant.

Body-worn camera footage recorded by Sgt. Spalding, PO Bogucki, and PO Ortiz was obtained (BR 02-06).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: At Boston Road and Union Avenue in the Bronx, Sergeant Joseph Spalding stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (B) Abuse of Authority: At Boston Road and Union Avenue in the Bronx, Police Officer Luis Ortiz stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

In PO Ortiz's BWC footage, at the 05:02 mark in the video player, PO Ortiz approached § 87(2)(b)'s vehicle. PO Ortiz asked § 87(2)(b) where he was going and why he was in a rush. The positions of the vehicles are visible at the 5:07 mark, and § 87(2)(b)'s vehicle appeared to be several feet away from the officers' vehicle. § 87(2)(b) explained that he did not want to hit the vehicle door and PO Ortiz told § 87(2)(b) not to give him an attitude. They argued about what transpired and at the 05:32 mark, PO Ortiz asked for § 87(2)(b)'s license, registration, and insurance card. At the 10:54 mark, the emergency lights of the officers' vehicle are visible.

§ 87(2)(b) testified (BR 07-09) that he observed a police vehicle at an unrelated vehicle stop, near the intersection of Boston Road and Union Avenue. As § 87(2)(b) approached the police vehicle, PO Ortiz opened the driver's side rear door. § 87(2)(b) stopped and honked his horn once or twice at a vehicle on his left-hand side, to avoid an accident and a collision with the police vehicle's door. PO Ortiz asked § 87(2)(b) what the problem was, and this led to an argument about what transpired. PO Ortiz asked § 87(2)(b) for his license and registration,



Bogucki frisked § 87(2)(b) around his pants pockets and lower legs. At the 04:25 mark, after completing a vehicle search (see Allegations F and G), Sgt. Spalding asked § 87(2)(b) for his identification and he said that he did not have one. At the 05:08 mark, § 87(2)(b) verbally provided his name and date of birth to PO Ortiz. PO Ortiz conducted a search on his department phone and § 87(2)(b) was ultimately arrested for an open bench warrant. There was no mention of an odor of marijuana in any officers' BWC footage.

§ 87(2)(b) testified that PO Bogucki frisked him from head to toe, including all pockets. § 87(2)(b) was frisked before he was arrested, but § 87(2)(b) was not sure who frisked § 87(2)(b) or where he was frisked. The vehicle did not have an odor of marijuana, nor did any officer mention such an odor.

Sgt. Spalding testified that given that he observed marijuana in plain view in § 87(2)(b)'s vehicle, the occupants were asked to exit. Sgt. Spalding frisked § 87(2)(b)'s shorts waistband, shorts pockets, and his chest, in order to ensure that he did not have any weapons or narcotics. Sgt. Spalding was not sure if he had a reason to believe that § 87(2)(b) had any weapons and he frisked § 87(2)(b) in order to determine whether he did. Sgt. Spalding did not have a specific fear for his safety and did not suspect § 87(2)(b) of committing any crime or violation. Sgt. Spalding did not think that PO Bogucki frisked § 87(2)(b). The marijuana packet was sealed and there was no odor of marijuana.

PO Bogucki testified that he was initially at the other vehicle stop and approached § 87(2)(b)'s vehicle shortly after PO Ortiz and Sgt. Spalding. When § 87(2)(b) exited the vehicle, PO Bogucki frisked § 87(2)(b) around his waistline and outside of his pants because he was removed from the vehicle and there was a reason why he was removed. PO Bogucki observed Sgt. Spalding focus his flashlight on an object inside of the vehicle, which indicated that he observed something in § 87(2)(b)'s vehicle. Sgt. Spalding did not indicate or tell PO Bogucki what he saw. Initially, PO Bogucki did not have any safety concerns, other than his perception that during all vehicle stops, anyone can be a threat. PO Bogucki did not recall whether he had any reason to believe that § 87(2)(b) had any weapons. Sgt. Spalding frisked § 87(2)(b)'s waistband and pockets. Though PO Bogucki believed that Sgt. Spalding generally had a reason for his actions, PO Bogucki did not know why he frisked § 87(2)(b). PO Bogucki did not smell an odor of marijuana.

PO Ortiz did not recall whether PO Bogucki frisked § 87(2)(b) or whether Sgt. Spalding frisked § 87(2)(b). An odor of marijuana emanated from § 87(2)(b)'s vehicle when he initially approached the vehicle.

§ 87(2)(b) received a summons for § 87(2)(b) (BR 01), which was prepared by PO Ortiz. The narrative states, "The undersigned observed the deft to be in possession of alleged marijuana in plain view and public place." The marijuana was vouchered by PO Bogucki (BR 15). Sgt. Spalding's, PO Bogucki's, and PO Ortiz's memo books do not mention an odor of marijuana (BR 16-18).

§ 87(2)(g)

§ 87(2)(g)

A frisk is defined as carefully limited running of the hands over the outside of a person's clothing feeling for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury. A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. A frisk may not be conducted to locate evidence of a crime, such as drugs. NYPD Patrol Guide, Procedure 212-11 (BR 19). The search incident to lawful arrest doctrine necessitates that an arrest has occurred or is about to occur, or at least be relatively contemporaneous therewith. A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest. The search and arrest must be "nearly simultaneous so as to constitute one event." People v. Evans, 43 NY2d 160 (1977) (BR 20). During a lawful vehicle stop, an officer may conduct a warrantless search of a vehicle and its occupants if that officer detects the odor of marijuana. People v. Chestnut, 43 A.D.2d 260 (1974) (BR 21).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: At Boston Road and Union Avenue in the Bronx, Sergeant Joseph Spalding searched the vehicle in which § 87(2)(b) was an occupant.**  
**Allegation (F) Abuse of Authority: At Boston Road and Union Avenue in the Bronx, Police Officer Luis Ortiz searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Spalding and PO Ortiz searched § 87(2)(b)'s vehicle, which is captured beginning at the 07:50 mark in the video player in Sgt. Spalding's BWC (BR 02) and the 05:02 mark in PO Ortiz' BWC footage (BR 03).

§ 87(2)(b) testified that Sgt. Spalding and PO Ortiz searched his vehicle, while he and § 87(2)(b) stood at the rear of the vehicle. Sgt. Spalding searched on the driver's side and PO Ortiz searched on the passenger side. § 87(2)(b) was unable to provide additional details about these searches, as PO Bogucki directed him to face the opposite direction (see Allegation H). § 87(2)(b) was not asked for consent to search his vehicle, nor did he provide consent.

Sgt. Spalding testified that while he stood next to the passenger side of § 87(2)(b)'s vehicle, he looked into the vehicle with his flashlight and observed a clear and silver packet that contained a green, leafy substance, which he definitively identified as marijuana. The packet was in plain view, on the floor, in the backseat, behind the passenger seat. Sgt. Spalding saw the marijuana from the open passenger window, approximately one foot away from where he stood. Sgt. Spalding and PO Ortiz then searched § 87(2)(b)'s vehicle. Sgt. Spalding's intention was to determine whether there were any more narcotics in the vehicle. Sgt. Spalding removed the marijuana and searched on the passenger side of the vehicle, including the arm rests, floor, under the seat, and in the backseat. The search lasted for a few minutes and nothing else was recovered. PO Ortiz searched on the driver's side of the vehicle, on the floor and possibly the visors, but Sgt. Spalding did not recall where else PO Ortiz searched.

PO Ortiz's and PO Bogucki's testimonies were consistent with Sgt. Spalding's testimony. PO Ortiz also testified that he searched § 87(2)(b)'s vehicle solely to check for additional narcotics.

According to the automobile exception to the warrant requirement, a warrantless vehicle search may be conducted when there is probable cause that the vehicle contains a weapon, contraband, or evidence of crime. People v. Belton, 55 N.Y.2d 49 (1982) (BR 22). When officers have a reasonable belief that a vehicle is associated with a crime, they are justified in conducting a thorough search of the vehicle for additional contraband and the fruits, instrumentalities, or evidence of the crime in question. People v. Clark, 45 N.Y.2d 432 (1978) (BR 23). The holding in Clark is applicable when an officer observes marijuana in plain view inside of a vehicle. People v. Brown, 116 A.D.2d 727 (1986) (BR 24).

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**Allegation (G) Abuse of Authority: At Boston Road and Union Avenue in the Bronx, Police Officer Edward Bogucki threatened to arrest § 87(2)(b)**

It is undisputed that while Sgt. Spalding and PO Ortiz were in the middle of searching § 87(2)(b)'s vehicle, he turned around to watch the vehicle search. PO Bogucki told § 87(2)(b) to turn around several times and asked if he wanted to "go in handcuffs," which is depicted at the 02:22 mark in the video player of PO Bogucki's BWC footage (BR 04). Up to that point, Sgt. Spalding had not said anything or indicated to PO Bogucki that something was recovered from § 87(2)(b)'s vehicle.

§ 87(2)(b) testified that while at the rear of the vehicle, § 87(2)(b) tried to turn around to see the vehicle search. PO Bogucki told § 87(2)(b) to face him and that if he turned around again, he would be arrested.

PO Bogucki testified that § 87(2)(b) repeatedly turned around to watch as Sgt. Spalding and PO Ortiz searched the vehicle, and he directed § 87(2)(b) to turn around at least three times. § 87(2)(b) did not comply, and PO Bogucki asked § 87(2)(b) if he wanted to go in handcuffs. This statement conveyed that § 87(2)(b) could have been detained while the officers conducted their investigation. Aside from approaching an emergency vehicle without exercising caution, PO Bogucki did not suspect that § 87(2)(b) committed any other crime or violation. As discussed, Sgt. Spalding's focus on an object inside of § 87(2)(b)'s vehicle indicated that Sgt. Spalding observed something in § 87(2)(b)'s vehicle. Additionally, Sgt. Spalding's frisk and subsequent vehicle search indicated that there may have been contraband or a weapon in the vehicle, but PO Bogucki did not have any additional reason to suspect that there was a weapon or contraband. PO Bogucki did not know why Sgt. Spalding frisked § 87(2)(b). PO Bogucki generally believed that there was a reason for his partners' actions, but he did not recall if he had a specific indication about what occurred. PO Bogucki did not recall when he learned that marijuana was recovered, but it was sometime during the vehicle stop.

§ 87(2)(g) Sgt. Spalding clarified that when a civilian observes his or her vehicle being searched, this may raise an officer's suspicion, as the individual may reach toward something that was concealed in the vehicle.

PO Ortiz did not recall whether PO Bogucki told § 87(2)(b) that he could go in handcuffs.

§ 87(2)(b) was issued a summons for unlawful possession of marijuana, per NY Penal Law § 221.05, which is a violation (BR 01). Based upon the circumstances, marijuana offenses may be classified as violations, misdemeanors, or felonies.

Upon reasonable suspicion that an individual has committed, is committing, or is about to commit a felony or Penal Law misdemeanor, officers may detain the individual to conduct a criminal investigation. NYPD Patrol Guide, Procedure 212-11 (BR 18). New York State Vehicle and Traffic Law § 1144-a (BR 13), as referenced in Allegations A-C, is a Penal Law violation.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation (H) Abuse of Authority: At the 42nd Precinct stationhouse, Sergeant Joseph Spalding threatened to arrest § 87(2)(b)**

In Sgt. Spalding's BWC footage (BR 05), at the 01:01 mark in the video player, Sgt. Spalding approached the front entryway in the stationhouse. Four civilians were seated in the civilian waiting area of the stationhouse. PO Ortiz told § 87(2)(b) to leave, and PO Ortiz and Sgt. Spalding walked behind § 87(2)(b) as he exited. § 87(2)(b) explained that he was there to check on § 87(2)(b) and Sgt. Spalding replied that he was fine. Additionally, Sgt. Spalding stated that when § 87(2)(b) first arrived, he walked into the precinct and cursed. Sgt. Spalding and § 87(2)(b) argued about what occurred, and § 87(2)(b) spoke loudly. § 87(2)(b) then left.

§ 87(2)(b) testified that approximately ten minutes after the incident concluded, he went to the 42<sup>nd</sup> Precinct stationhouse to check on § 87(2)(b). When § 87(2)(b) arrived, Sgt. Spalding and PO Ortiz were outside of the stationhouse. Sgt. Spalding and PO Ortiz told § 87(2)(b) to leave. Sgt. Spalding stated that if § 87(2)(b) entered the stationhouse, he would be arrested, but did not specify why.

Sgt. Spalding testified that when § 87(2)(b) entered the stationhouse, he stated that § 87(2)(b) had been illegally arrested and that his vehicle had been illegally searched. § 87(2)(b) was belligerent, insofar as he cursed at the officers and stated said that he was going to sue them. Sgt. Spalding told § 87(2)(b) that he was going to be issued a summons and/or arrested for his behavior. He could have been arrested solely for disorderly conduct, as he yelled, cursed, and caused public alarm. There were other civilians in the stationhouse and some individuals nearby on the street, but nobody was involved in the interaction.

PO Ortiz testified that he did not recall whether Sgt. Spalding told § 87(2)(b) that he could be arrested. § 87(2)(b) could have been arrested for obstruction of governmental administration, because he remained in the stationhouse even though he was asked to leave several times. § 87(2)(b) seemed upset, insofar as he was loud and asked the same questions repeatedly. No individuals stopped to observe what happened during the interaction between the officers and § 87(2)(b) inside or in front of the stationhouse.

PO Bogucki testified that when § 87(2)(b) entered the stationhouse, he raised his voice and caused an "uproar." § 87(2)(b) was irate, insofar as he yelled and moved his hands around. § 87(2)(b)'s uproar did not cause a crowd to gather. PO Bogucki was not sure whether Sgt. Spalding told § 87(2)(b) that he could be arrested. Based upon his observations, § 87(2)(b) was "on the cusp" of disorderly conduct, but he was not present for the entire interaction.

A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises. NY Penal Law § 140.05 (BR 25). A person is guilty of disorderly conduct when, with an intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she engages in fighting or in violent, tumultuous, or threatening behavior; makes unreasonable noise; or uses abusive or obscene language. NY Penal Law § 240.20 (BR 26). Isolated statements using coarse language to criticize a police officer, unaccompanied by other aggravating circumstances, rarely provide the requisite mens rea -- *intent* to cause public harm -- required to support a charge of disorderly conduct. Additionally, the mere presence of spectators,



without evidence that they became verbally or physically involved in the dispute, is not enough to constitute disorderly conduct. People v. Baker, 20 N.Y.3d 354 (2013) (BR 27).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 29).
- Sgt. Spalding has been a member of service for 19 years and has been a subject in 14 CCRB complaints and 27 allegations, none of which were substantiated. § 87(2)(g)
- PO Ortiz has been a member of service for six years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO Bogucki has been a member of service for five years and this is the first CCRB complaint to which he has been a subject.

#### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of February 3, 2020, the NYC Comptroller's Office has no record of a Notice of Claim being filed in regard to this complaint (BR 30).

- § 87(2)(b) [Redacted]
- § 87(2)(b) [Redacted]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date